In the High Court of Judicature for Rajasthan
Jaipur Bench

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Cr. Misc. Petition No.358/2002
Narain Singh ***Versus*** State & Shyamlal Jat

Date of Order ::: 20/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Virendra S. Yadav, for petitioner
Mr. Arun Sharma, Public Prosecutor for State.

Instant petition U/s 482 CrPC has been filed assailing order dt.14/09/2001 whereby Addl. Chief Judl. Magistrate Bayana (Bharatpur) took cognizance of offence U/s 498-A & 304-B, IPC against petitioner in Cr.Case No.524/99.

Petitioner is elder brother of Vijay Singh whose wife Manju died in an incident on 08/10/99 – report whereof (524/99) was lodged by Shyamlal-father of Manju (respondent No.2) at PS Bayana on 11/10/99 alleging inter-alia that on 10/02/96, his daguther (Manju) was married to Vijay Singh and according to his financial capacity, he had given dowry including cash of Rs.21,000/-; jewellery & other goods but both the elder brothers of husband of Manju namely Narain Singh (Petitioner), Balu and their wives & her mother-in-law raised demand of Rs.30,000/- from his daughter saying that either she should

fulfill their demand of Rs.30,00/- otherwise would not be allowed to remain in matrimonial home; and many a times, she was brutally beaten and in fact killed by putting her on fire.

On said report, police registered criminal case for offences U/Ss 498-A & 304-B, IPC against petitioner; his brother Balu and their wives and mother. During investigation, statements of neighbours to Manju's matrimonial home were recorded U/s 161 CrPC – on the basis whereof and after inquiry in details, police submitted negative report concluding that deceased Manju died because of burn injuries sustained while cooking meals and she was admitted in hospital for eight days and no itoa of evidence came on record about demand of dowry and she was taken by non-else but accused persons to the hospital and full medical care was provided to her.

It appears from the record that no protest petition was filed by complainant but taking note of case diary, including statements U/s 161, CrPC, post mortem report, learned Magistrate took cognizance of offence U/S 498-A & 304-B, IPC against petitioner only vide order dt. 14/09/2001 and issued warrant of arrest.

Counsel for petitioner submits that since final report was submitted by police after taking note of complete investigation, it ought to have been taken note of by learned Magistrate while taking cognizance impugned. In support of contention, Counsel placed reliance upon decision of this Court in **Abdul Rehman Vs. State (1993 Raj Cr.C 611**).

Public Prosecutor supported the order impugned and submits that learned Magistrate was not supposed to give reasons in details while taking cognizance, it has been observed that case diary has been looked into which certainly includes negative final report; therefore, order impugned does not call for interference, particularly when he will get opportunity to raise all such objections raised herein at the time of framing charge and so also at the stage of trial, as well.

I have considered contentions of Counsel for the parties and with their assistance, examined material on record. This cannot be disputed that while taking cognizance, details reasons are not required to be recorded. It appears from order impugned that the learned Magistrate has confined only with statements

recorded U/S 161 CrPC & post mortem report but at the same time, has not considered negative final report submitted by police. In instant case, negative final report was submitted by police after detailed investigation – against which there is no protest petition – in the absence whereof, statements of complainant and his witnesses were not recorded U/s 200 & 202, CrPC, but at the same time, learned Magistrate is expected to look into complete material including negative final report; while taking cognizance. It is true that negative final report is also part of case diary but from the order, impugned, it does not reflect as to whether it has been looked into by learned Magistrate while taking cognizance impugned.

In **Rehman Vs. State** (supra) this Court has observed that the learned Magistrate has to consider negative final report as well as accompanying material and then concludes as to whether any offence has been committed or not, which is certainly missing in the instant case. This Court observed ad infra:

> **"6**. From the perusal of the order under consideration it is apparent that while the learned Judge has referred to injury report

> and statements of Jan Mohd., Sabir Mohd., and Abdul Aziz available on the record of investigation, it has not considered, the conclusions arrived at by the investigating agency and has applied its mind to the question why the final report submitted by investigating agency is not acceptable. In the absence of such consideration, in my opinion the order cannot be sustained and has to be quashed."

In view of observations (supra), since consideration of relevant material in instant case, is completely missing in the order impugned while taking cognizance by learned Magistrate, particularly negative final report, it has certainly caused prejudice to the petitioner.

Consequently, misc. petition succeeds and is hereby allowed alongwith stay petition No.235/02. Order dt.14/09/01 passed by ACJM Bayana is set aside. The matter alongwith record is remanded back to trial Court to proceed in accordance with law.

(**Ajay Rastogi), J.**